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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

International Application of: Andrea Kern *et al.*

Serial No.: 08/637,752

Group Art Unit: Unassigned

Filing Date: April 29, 1996

Examiner: Unassigned

For: ADENO-ASSOCIATED VIRUS -
ITS DIAGNOSTIC USE WITH
EARLY ABORTION

Attorney Docket No.: 8484-013-999

RENEWED PETITION UNDER 37 CFR 1.137(b)

ATTN: INTERNATIONAL DIVISION, LEGAL STAFF
BOX PCT

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

In response to the Decision on Petition for Revival under 37 C.F.R. §1.137(b) ("Decision") mailed from the United States Patent Office on February 15, 2000, Applicants submit a corrected Terminal Disclaimer and the required fee for submitting the corrected terminal disclaimer and hereby renew the petition to revive the above-referenced application without prejudice.

With regard to items (1), (2) and (3), Applicants thank the Commissioner for his acknowledgment that a proper reply, the required petition fee, and a proper statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R.(b) was unintentional have been satisfied.

With regard to outstanding item number (4), Applicants hereby submit a corrected Terminal Disclaimer and the required fee.

With regard to the unexecuted declaration submitted 2 May 1996, Applicants will submit a fully executed declaration once the application is revived.

Delay In Responding To Decision On Petition For Revival Under 37 C.F.R.

§1.137(b). The Decision states that if reconsideration on the merits of the petition is desired, a proper response must be filed within two months from the mail date of the Decision, extendable under 37 C.F.R. 1.136(a) by four months. Applicants respectfully request consideration of this Renewed Petition to Revive Under 37 CFR 1.137(b) on the ground that Applicants' delay in filing the Renewed Petition and the corrected Terminal Disclaimer as required by the Decision on Petition For Revival issued February 15, 2000 was unavoidable.

More specifically, on February 15, 2000, the PTO mailed the Decision in connection with the above-referenced patent application. However, Applicants did not receive the Decision via first class mail. Applicants submit herewith a declaration of Carolyn Garcia attesting that the Decision was not received via first class mail.

On or about August 20, 2000, Applicants' attorney, Birgit Millauer, telephoned Examiner Thomson, and asked when Applicants could expect to receive a Decision on the Petition For Revival filed December 8, 1999. The Examiner advised that a Decision had been mailed on February 15, 2000. Dr. Millauer informed the Examiner that she never had seen this decision, and that she will check whether it ever had been received by her office. She further asked to receive a fax copy of the Decision, which Examiner Thompson agreed to send. Dr. Millauer checked with the firm's docketing and file room and ultimately concluded that no Decision on the Petition For Revival had been received as of that date. The Examiner sent a copy of the Decision by facsimile on September 7, 2000.

Applicants submit that the delay in filing the Renewed Petition to Revive was unavoidable. The reasonably prudent person standard is applied to determine whether a delay is unavoidable, and such a standard permits applicants to rely on the "ordinary and trustworthy agencies of mail and telegraph." *See MPEP § 711.03(c), III, C, 2 (citing In re Mattullath, 38 App. D.C. 497, 514-15 (1912)).*

Applicants relied on the ordinary and trustworthy agency of the mail for delivery of the Decision on Petition for Revival Under 37 CFR 1.137(b). As evidenced by the Declaration of Carolyn Garcia, the Decision on Petition for Revival Under 37 CFR 1.137(b) was not received in the mail. Applicants therefore submit that the delay in filing the corrected terminal disclaimer and the renewed Petition to Revive was unavoidable due to the failure of the ordinary and trustworthy agency of the mail.

Applicants' attorneys diligently prepared, in accordance to the Decision on the Decision for Revival, a Renewed Petition to Revive, including a corrected Terminal Disclaimer after receiving the facsimile copy of the Decision.

Therefore, Applicants hereby solicit consideration of the untimely filed Renewed Petition Under 37 CFR 1.137(b) because of unavoidable delay.

CONCLUSION

Applicants believe that with the submission of item (4) listed above, all of the requirements necessary for granting the petition to revive filed in the above-referenced application have now been completed.

Therefore, it is respectfully requested that the Commissioner reconsider Applicants petition to revive the above-referenced application and that said application be placed in line for examination.

Respectfully submitted,

Date September 18, 2000

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Enclosures